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Jonathan Mesiano-Crookston @/#COVIDisAirborne

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28 Aug, 29 tweets, 5 min read

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Quick lesson about affidavit evidence in court.

First, evidence in court is typically (and mostly) based on personal experience. Here I am talking about things you saw, or did.

i.e. I saw this happen. I talked to that person. I sent this email, etc.

Second, you can introduce understanding of how something technical works, but when you do, you introduce it through the evidence of an "expert witness"

This is someone who is testifying to a technical matter, and they must be a. needed for the case, and b. qualified as an expert

So, if I want to explain why something complex happens, an affidavit of a regular person would not typically help the court.

The person likely doesn't know, but even if they did, they aren't an expert in that field.

So, for example, you might have a construction expert tell you why the wall fell down.

Or you might have a forensic accountant explain how a tax fraud was perpetrated by moving assets off shore.

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In both cases the expert would be qualified by the court to opine on these matters

I was told that when arguing that "droplet" precautions are sufficient, the government filed ~30 affidavits of infectious disease doctors who said in their belief, this virus travels in droplets.

These people are not experts.

As I've said, ID docs are mostly clinicians.

They do not study on aerosols and transmission.

The likely do not know anything other than what they learned in a course in med school. So they are either parroting, or they read up on aerosols.

Either way they are not experts on viral transmission.

So asking them about aerosols is like asking me to talk about criminal law

I can give you AN answer, bc I took a criminal course once, but if it's anything more than a basic question I will just be repeating from the course

More to the point: I don't practice in the area so why would you bother asking me?

Go ask someone who works in the area.

EXACT same issue here.

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But back to the 30: these people could only be saying "in their belief" this is droplet transmitted. They are doing so based on things they heard.

This is not terribly helpful to the court.

You can submit it (you can submit whatever you want), but it's poor lawyering.

(Side note:

1. Protip: that's why there are 30 of them. It's just flooding the judges with affidavits in the hopes that numbers matter. On this point, numbers do not matter.

2. Proprotip: Judges are not stupid people. They know the trick you are pulling.)

What SHOULD have happened is air experts should have been consulted to talk as _expert witnesses_ on point.

The expertise would then be against ID doc affidavits which are basically just personal anecdotes as to what they observed in hospitals.

Also, the ID docs would have had a difficult time (to put mildly) on cross-examination as to their experience STUDYING aerosols.

So, the tldr:

30 affidavits of useless affiants talking outside their expertise and parroting first year med is not really telling of anything other than the government likely had no better evidence to offer.

Because all of this is in the air.

Here is the discussion of the other case and affidavits, etc.

> **Ed Tubb**
> @EdTubb · **Follow**
>
> Replying to @kprather88 @CPita3 and 5 others
>
> 30 of them have signed a legal affidavit affirming their belief COVID primarily spreads droplet + contact and not airborne, and that Ontario's framework is consistent with the precautionary principle.
>
> None I've contacted have disavowed that. But I haven't asked since Thurs.
>
> 12:04 PM · Aug 28, 2021
>
> 41 See the latest COVID-19 information on X
>
> Read 21 replies

That case LOST for reasons OTHER THAN the 30 affidavits were awesome/correct.

It lost because there was no world the Divisional Court would overrule the CMOH mask directive.

I said that before the case was heard, while the case was heard, and when the reasons were released.

Here is a thread where I tracked the case real time, so it's sloppy and messy and probably full of bad jokes but the

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Bonus for reading this far:

The ONE Canadian doctor who would be an expert on this topic.

The ONE.

The ONLY.

Is Dr. Raymond Tellier out of Quebec.

Of course, you could find some aerosol experts, but they would be in other fields, like engineering and science.

Here is one of his papers.

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Here is another of his papers.

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That thread is fun if you are interested in a bit of a "science war or words".

*war OF words.

Beyond what I wanted to write about, but also note: canlii.org/en/on/onsc/doc...

"Experts must be neutral and objective, to the extent that they are not, they are not properly qualified to give expert opinions (citations deleted)."

citing Bank of Montreal v. Citak, 104 ACWS (3d) 100

https://www.canlii.org/en/on/onsc/doc/2009/2009canlii12799/2009canlii12799.html

The legal test itself is from Supreme Court of Canada in R. v. Mohan, [1994] 2 S.C.R. 9 at para. 17:
(a) relevance;
(b) necessity in assisting the trier of fact;
(c) the absence of any exclusionary rule;
(d) a properly qualified expert.
Must establish factual basis for expert.

scc-csc.lexum.com/scc-csc/scc-cs... or you can read it on CanLII.

https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1131/index.do

A fun little parting thought:

All 30 couldn't have been experts because there is a 3 expert cap.

So I suppose they must have just been "guys and gals testifying to whatever"

. . .

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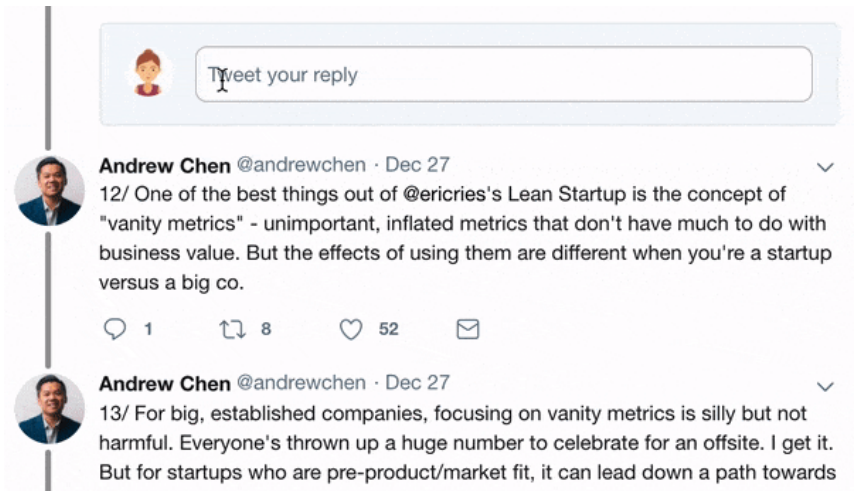

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Jonathan Mesiano-Crookston @/#COVID...
@jmcrookston

15 Sep

Many commenters said "SARS-CoV-2 isn't measles". Impression that measles was a terror and this was no big deal. But how deadly was measles? Well, in US, before vax, 3-4mm caught and 400 died each year. 400 COVID-19 currently 665k

cdc.gov/measles/about/... for example historical view and more info

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15 Sep

DEFINITELY NOT, NO THANK YOU
npr.org/2021/09/14/103...

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also related:

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15 Sep

Well, that went well.

Two seconds of searching, and there was one in Cornwall closed already too. Then re-opened.
ottawa.ctvnews.ca/students-retur...

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15 Sep

Answering the quote: yes it was.

Make no mistake. All the people now saying maybe we made a mistake are safe in summer homes with very rich salaries.

At this stage as a lawyer I am comfortable suggesting that the commissions we strike should consider criminal charges Eg France's ex Health Minister (I believe) was recently indicted Everybody should save their e-mails. If those go missing it is spoliation and contempt of court

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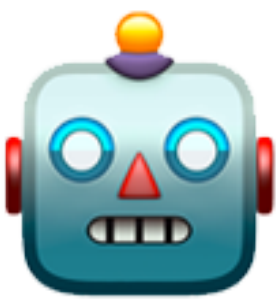

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